NOTIFICATION.

(LAW DEPARTMENT)

No LAW 99 LCA 62, dated Bangalore, 24th October 1962

Ordered that the Extradition Act, 1962 (34 of 1962), which has been published in the *Gazette of India*, Extraordinary, Part II, Section 1, dated the 17th September 1962 be republished in the *Mysore Gazette*, for general information.

By Order and in the name of the Governor of Mysore,

S. SRIPADARAJ,
Under Secy. to Govt., L. D.

20

Assented to on 15th September 1962. Act No 34 of 1962

THE EXTRADITION ACT, 1962 (34 OF 1962)

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THE FIRST SCHEDULE

THE SECOND SCHEDULE.

THE EXTRADITION ACT, 1962 (34 OF 1962)

AN

ACT

to consolidate and amend the law relating to the extradition of fugitive criminals.

BE it enacted by Parliament in the Thirteenth year of the Republic of India as follows.—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement—(1)This Act may be called the Extradition Act, 1962

(2) It extends to the whole of India

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2 Definitions—In this Act, unless the context otherwise requires,—

(*a*) "commonwealth country" means a commonwealth country specified in the First Schedule and such other commonwealth country as may be added to that Schedule by the Central Government by notification in the Official Gazette and includes every constituent part, colony or dependency of any commonwealth country so specified or added,

(*b*) "conviction" and "convicted" do not include or refer to a conviction which under foreign law is a conviction for contumacy, but the term "person accused' includes a person so convicted for contumacy;

(*c*) "extradition offence" means—

(*i*) in relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty with that State,

(*c*) in relation to a foreign State other than a treaty State or in relation to a commonwealth country an offence which is specified in, or which may be specified by notification under the Second Schedule,

(*d*) "extradition treaty" means a treaty or agreemen made by India with a foreign State relating to the extradition of fugitive criminals, and includes any treaty or agreement relating to the extradition of fugitive criminals made before the 15th day of August, 1947, which extends to and is binding on, India,

(*e*) "foreign State" means any State outside India other than a commonwealth country, and includes every constituent part, colony or dependency of such State,

(*f*) "fugitive criminal" means an individual who is accused or convicted of an extradition offence committed within the jurisdiction of a foreign State or a commonwealth country and is, or is suspected to be, in some part of India,

(*g*) "magistrate" means a magistrate of the first class or a presidency magistrate

(*h*) "notified order" means an order notified in the Official Gazette

(*i*) "prescribed' means prescribed by rules made under this Act, and

(*j*) "treaty State" means a foreign State with which an extradition treaty is in operation

3. (1) **Application of Act.**— The Central Government may, by notified order, direct that the provisions of this act other than Chapter III shall apply—

(*a*) to such foreign State or part thereof, or

(*b*) to such commonwealth country or part thereof to which Chapter III does not apply,

as may be specified in the order

(2) The Central Government may, by the same notified order as is referred to in sub-section (1) or any subsequent notified order, restrict such application to

fugitive criminals found, or suspected to be, in such part of India as may be specified in the order.

(3) Where the notified order relates to a treaty State,—

(*a*) it shall set out in full the extradition treaty with that state,

(*b*) it shall not remain in force for any period longer than that treaty, and

(*c*) the Central Government may, by the same or any subsequent notified order, render the application of this Act subject to such modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the treaty with that state.

CHAPTER II

EXTRADITION OF FUGITIVE CRIMINALS TO FOREIGN STATES AND TO COMMONWEALTH COUNTRIES TO WHICH CHAPTER III DOES NOT APPLY.

4. Requistion for surrender.—A requisition for the surrender of a fugitive criminal of a foreign State or a commonwealth country may be made to the Central Government.

(*a*) by a diplomatic representative of the foreign State or commonwealth country at Delhi; or

(*b*) by the Government of that foreign State or commonwelth country communicating with the Central Government through its diplomatic representative in that State or country,

and if neither of these modes is convenient, the requisition shall be made in such other mode as is settled by arrangement made by the Government of the foreign State or commonwealth country with the Government of India.

5. Order for magisterial inquiry.—Where such requisition is made, the Central Government may, if it thinks fit, issue an order to any magistrate who would have had jurisdiction to inquire into the offence if it had been an offence committed within the local limits of his jurisdiction, directing him to inquire into the case

6. Issue of warrant for arrest.—On receipt of an order of the Central Government under section 5, the magistrate shall issue a warrant for the arrest of the fugitive criminal

7. Procedure before magistrate —(1) When the fugitive criminal appears or is brought before the magistrate, the magistrate shall inquire into the case in the same manner and shall have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by a court of session or High Court.

(2) Without prejudice to the generality of the foregoing provisions, the magistrate shall in particular, take such evidence as may be produced in support of the requisition of the foreign State or commonwealth country and on benalf of the fugitive criminal, including any evidence to show that the offence of which the fugitive criminal is accussed or has been convicted is an offence of political character or is not an extradition offence.

(3) If the magistrate is of opinion that a *Prima facie* case is not made out in support of the requisition of the foreign State or commonwealth country, he shall discharge the fugitive criminal.

(4) If the magistrate is of opinion that *Prima facie* case is made out in support of the requisition of the foreign State or commonwealth country, he may commit the fugitive criminal to prison to await the orders of the Central Government, and shall report the result of his inquiry to the Central Government, and shall forward together with such report, any written statment which the fugitive criminal may desire to submit for the consideration of the Central Government.

8. Surrender of fugitive criminal — If, upon receipt of the report and statment under sub-section (4) of Section 7, the Central Government is of opinion that the fugitive criminal ought to be surrendered to the foreign State or commonwealth country, it may issue a warrent for the custody and removal of the fugitive criminal and for his delivery at a place and to a person to be named in the warrant

9 Power of magistrate to issue warrant of arrest in certain cases. (1) Where it appears to any magistrate that a person within the local limits of his jurisdiction is a fugitive criminal of a foreign State or commonwealth country he may, if he thinks fit, issue a warrant for the arrest of that person on such information and on such evidence as would, in his opinion, justify the issue of a warrant if the offence of which the person is accused or has been convicted had been committed within the local limits of his jurisdiction

(2) The magistrate shall forthwith report the issue of a wariant under sub-section (1) to the Central Government and shall forward the information, and the evidence or certified copies thereof to that Gevernment

(3) A person arrested on a warrant issued under sub-section (1) shall not be detained for more than thice months unless within that period the magistrate receives from the Central Goveinment an order made with reference to such person under section 5.

10. Receipt in evidence of exhibits, depositions and other documents and authentication thereof (1) In any proceedings against a fugitive criminal of a foreign State of commonwealth country under this Chapter, exhibits and depositions (whether received or taken in the presence of the person against whom they are used or not) and copies thereof and official certificates of facts and judicial documents stating facts may, if duly authenticated, be received as evidence

(2) Warrants, depositions or statements on oath, which purport to have been issued or taken by any court of justice outside India are copies thereof, certificates of, or judicial documents stating the facts of, conviction before any such court shall be deemed to be duly authenticated if—

(*a*) the warrant purports to be signed by a judge magistrate or officer of the State or country where the same was issued or acting in or for such State or country,

(*b*) the depositions or statements or copies thereof purport to be certified, under the hand of a judge, magistrate or officer of the State or country where the same were taken, or acting in or for such State or country, to be original depositions or statements or to be true copies thereof, as the case may require,

(*c*) the certificate of, or judicial document stating the fact of, a conviction purports to be certified by a judge, magistrate or officer of the State or country where the conviction took place or acting in or for such State,

(*d*) the warrants, depositions, statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some witness or by the official seal of a minister of the State or country where the same were respectively issued, taken or given

11 Chapter not to apply to commonwealth countries to which Chapter III applies. Nothing contained in this Chapter shall apply to fugitive criminals of a commonwealth country to which Chapter III applies

CHAPTER III

RETURN OF FUGITIVE CRIMINALS TO COMMONWEALTH COUNTRIES WITH EXTRADITION ARRANGEMENTS

12 Application of Chapter. (1) This Chapter shall apply only to any such commonwealth country to which, by reason of an extradition arrangement entered into with that country, it may seem expedient to the Central Government to apply the same

(2) Every such application shall be by notified order, and the Central Government may, by the same or any subsequent notified order, direct that this Chapter and Chapters I, IV and V shall, in relation to any such commonwealth country, apply subject to such modifications, exceptions, conditions and qualifications as it may think fit to specify in the order for the purpose of implementing the arrangement.

13. Liability of fugitive criminals from commonwealth countries to be apprehended and returned Where a fugitive criminal of any commonwealth country to which this Chapter applies is found in India, he shall be liable to be apprehended and returned in the manner provided by this Chapter to that commonwealth country.

14 Endorsed and provisional warrants. A fugitive criminal may be apprehended in India under an endorsed warrant or a provisional warrant.

15 Endorsed warrant for apprehension of fugitive criminal. Where a warrant for the apprehension of a fugitive criminal has been issued in any commonwealth country to which this Chapter applies and such fugitive criminal is, or is suspected to be, in India, the Central Government may, if satisfied that the warrant was issued by a person having lawful authority to issue the same, endorse such warrant in the manner prescribed, and the warrant so endorsed shall be sufficient authority to apprehend the person named in the warrant and to bring him before any magistrate in India.

16. Provisional warrant for apprehension of fugitive criminal.— (1) Any magistrate may issue a provisional warrant for the apprehension of a fugitive criminal from any commonwealth country to which this Chapter applies who is, or is suspected to be, in or on his way to India, on such information and under such circumstances as would, in his opinion, justify the issue of a warrant, if the offence of which the fugitive criminal is accused or has been convicted had been committed within his jurisdiction and such warrant may be executed accordingly

(2) A magistrate issuing a provisional warrant shall forthwith send a report of the issue of the warrant together with the information or a certified copy thereof to the Central Government, and the Central Government may, if it thinks fit, discharge the person apprehended under such warrant.

(3) A fugitive criminal apprehended on a provisional warrant may, from-time to time, be remanded for such reasonable time, not exceeding seven days at any one time, as under the circumstances seems requisite for the production of an endorsed warrant.

17. Dealing with fugitive criminal when apprehended — (1) If the magistrate, before whom a person apprehended under this Chapter is brought, is satisfied on inquiry that the endorsed warrant for the apprehension of the fugitive criminal is duly authenticated and that the offence of which the person is accused or has been convicted is an extradition offence, the magistrate shall commit the fugitive criminal to prison to await his return and shall forthwith send to the Central Government a certificate of the committal

(2) If on such inquiry the magistrate is of opinion. that the endorsed warrant is not duly authenticated or that the offence of which such person is accused or has been convicted is not an extradition offence, the magistrate may, pending the receipt of the orders of the Central Government. detain such person in custody or release him on bail

(3) The magistrate shall report the result of his inquiry to the Central Government and shall forward together with such report any written statement which the fugitive criminal may desire to submit for the consideration of that Government.

18 Return of fugitive criminal by warrant.—The Central Government may, at any time after a fugitive criminal has been committed to prison under this Chapter, issue a warrant for the custody and removal to the commonwealth country concerned of the fugitive criminal and for his delivery at a place and to a person to be named in the warrant.

CHAPTER IV

SURRENDER OR RETURN OF ACCUSED OR CONVICTED PERSONS FROM FOREIGN STATES OR COMMONWEALTH COUNTRIES.

19. Mode of requisition or form of warrant for the surrender or return to India of accused or convicted person who is in a Foreign State or commonwealth country.—(1) A requisition for the surrender of a person accused or convicted of an extradition offence committed in India and who is or is suspected to be, in any foreign State or commonwealth country to which Chapter III does not apply, may be made by the Central Government—

(*a*) to a diplomatic representative of that State or country at Delhi, or

(*b*) to the Government of that State or country through the diplomatic representative of India in that State or country;

and if neither of these modes is convenient, the requisition shall be made in such other mode as is settled by arrangement made by the Government of India with that State or country

(2) A warrant issued by a magistrate in India for the apprehension of any person who is, or is suspected to be, in any commonwealth country to which Chapter III applies shall be in such form as may be prescribed.

20. Conveyance of accused or convicted person surrendered or returned —Any person accused or convicted of an extradition offence who is surrendered or returned by a foreign State or commonwealth country may, under the warrant of arrest for his surrender or return issued in such State or country, be brought into India and delivered to the proper authority to be dealt with according to law.

21 Accused or convicted person surrendered or returned by foreign State or commonwealth country not to be tried for previous offence —Whenever any person accused or convicted of an offence, which, if committed in India would be an extradition offence, is surrendered or returned by a foreign State or commonwealth country, that person shall not until he has been restored or has had an opportunity of returning to that State or country, be tried in India for an offence committed prior to the surrender or return, other than the extradition offence proved by the facts on which the surrender or return is based

CHAPTER V

MISCELLANEOUS

22 Liability of fugitive criminals to be arrested and surrendered or returned —Every fugitive criminal of a foreign State or commonwealth country shall, subject to the provisions of this Act, be liable to be arrested and surrendered or returned, whether the offence in respect of which the surrender or return is sought was committed before or after the commencement of this Act, and whether or not a court in India has jurisdiction to try that offence.

23 Jurisdiction as to offences committed at sea or in air —Where the offence in respect of which the surrender or return of a fugitive criminal is sought was committed on board any vessel on the high seas or any aircraft while in the air outside India or the Indian territorial waters which comes into any port or aerodrome of India, the Central Government

and any magistrate having jurisdiction in such port or aerodrome may exercise the powers conferred by this Act.

24. Discharge of person apprehended if not surrendered or returned within two months.—If a fugitive criminal who, in pursuance of this Act, has been committed to prison to await his surrender or return to any foreign State or commonwealth country is not conveyed out of India within two months after such committal, the High Court, upon application made to it by or on behalf of the fugitive criminal and upon proof that reasonable notice of the intention to make such application has been given to the Central Government, may order such prisoner to be discharged unless sufficient cause is shown to the contrary

25. Release of persons arrested on bail—In the case of a person who is a fugitive criminal arrested or detained under this Act, the provisions of the Code of Criminal Procedure, 1898, (5 of 1898.),relating to bail shall apply in the same manner as they would apply if such person were accused of committing in India the offence of which he is accused or has been convicted, and in relation to such bail, the magistrate before whom the fugitive criminal is brought shall have, as far as may be, the same powers and jurisdiction as a court of session under that Code.

26. Abetment of extradition offences—A fugitive criminal who is accused or convicted of abetting any extradition offence shall be deemed for the purposes of this Act to be accused or convicted of having committed such offence and shall be liable to be arrested and surrendered accordingly

27 Lawfulness of, and re-taking on escape from, custody under warrants—It shall be lawful for any person to whom a warrant is directed for the apprehension of a fugitive criminal to hold in custody and convey the person mentioned in the warrant to the place named in the warrant, and if such person escapes out of any custoday to which he may be delivered in pursuance of such warrant, he may be

re-taken as a person accused of an offence against the law of India may be re-taken upon an escape.

28. Property found on fugitive criminal—Everything found in the possession of a fugitive criminal at the time of his arrest which may be material as evidence in proving the extradition offence may be delivered up with the fugitive criminal on his surrender or return, subject to the rights, if of third parties with respect thereto

29. Power of Central Government to discharge any fugitive criminal—If it appears to the Central Government that by reason of the trivial nature of the case or by reason of the application for the surrender or return of a fugitive criminal not being made in good faith or in the interests of justice or for political reasons or otherwise, it is unjust or inexpedient to surrender or return the fugitive criminal, it may, by order, at any time stay any proceedings under this Act, and direct any warrant issued or endorsed under this Act to be cancelled and the person for whose arrest the warrant has been issued or endorsed to be discharged.

30. Simultaneous requisitions—If requisitions for the surrender of a fugitive criminal are received from more than one foreign State or commonwealth country or from any foreign State and any commonwealth country, the Central Government may, having regard to the circumstances of the case, surrender the fugitive criminal to such State or country as that Government thinks fit.

31. Restrictions on surrender.—A fugitive criminal shall not be surrendered or returned to a foreign State or commonwealth country—

(*a*) if the offence in respect of which his surrender is soughtis of a political character or if he proves to the satisfaction of the magistrate or court before whom he may be produced or of the Central Government that the requisition or warrant for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character,

(*b*) if prosecution for the offence in respect of which his surrender is sought is according to the law of that State or country barred by time,

(*c*) unless provision is made by the law of the foreign State or commonwealth country or in the extradition treaty with the foreign State or extradition arrangement with the commonwealth country that the fugitive criminal shall not, until he has been restored or has had an opportunity of returning to India, be detained or tried in that State or country for any offence committed prior to his surrender or return, other than the extradition offence proved by the facts on which his surrender or return is based,

(*d*) if he has been accused of some offence in India, not being the offence for which his surrender or return is sought, or is undergoing sentence under any conviction in India until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise,

(*e*) until after the expiration of fifteen days from the date of his being committed to prison by the magistrate.

32 Sections 29 and 31 to apply without any modification thereof.— Notwithstanding anything to the contrary contained in section 3 or section 12, the provisions of sections 29 and 31 shall apply without any modification to every foreign State or commonwealth country

33 Act not to affect the Foreigners Act, 1946.—Nothing in this Act shall affect the provisions of the Foreigners Act, 1946 (31 of 1946) or any order made thereunder

34 Application of Act to Republic of Ireland.—The provisions of this Act shall apply in relation to the Republic of Ireland in the like manner and subject to the like conditions as they apply in relation to a commonwealth country

35 Notified orders and notifications to be laid before Parliament —Every notified order made or notification issued under this Act shall, as soon as may be after it is made or issued, be laid before each House of Parliament

36. Power to make rules —(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely .—

(*a*) the form in which a requisition for the surrender of a fugitive criminal may be made ;

(*b*) the form in which a warrant for the apprehension of any person in a commonwealth country to which Chapter III applies may be made ,

(*c*) the manner in which any warrant may beendorsed or authenticated under this Act ,

(*d*) the removal of fugitive criminals accused or in custody under this Act and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them ,

(*e*) the seizure and disposition of any property which is the subject of, or required for proof of, any alleged offence to which this Act applies ,

(*f*) the form and manner in which or the channel through which a magistrate may be required to make his report to the Central Government under this Act ,

(*g*) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be , so however that any

such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

37 Repeals and savings —(1) The Indian Extradition Act, 1903 (15 of 1903), and any law corresponding thereto in force at the commencement of this Act in the territori s which, immeidately before the 1st day of November, 1956, were comprised in Part B States and the North E st Frontier Agency and Tuensang District (Extradition) Regulation, 1961 (3 of 1961) are hereby repealed.

(2) The Extradition Acts, 1870 to 1932 (33 and 34 Vict c. 52, 36 and 37 Vict c 60, 6Edw 7, c 15, 22 and 23 Geo 5, c 39. 44 and 45 Vict. c 69), and the Fugitive Offenders Act, 1881, in so far as they apply to and operate as part of the law of India, are hereby repealed.

THE FIRST SCHEDULE

[*See* section 2 (a)]

The following are commonwealth countries —

1 Commanwealth of Australia.
2. Canada
3. Ceylon
4. Cyprus.
5 Federation of Malaya.
6 Ghana.
7 New Zealand
8. Nigeria
9. Pakistan.
10 Sierra Leone
11 Singapore
12 Tanganyika.
13 United Kingdom

THE SECOND SCHEDULE

[*See* section 2 (c) (ii)]

Extradition offences in relation to foreign States other than treaty States or in relation to commonwealth countries.

The following list of extradition offences is to be construed according to the law in force in India on the date of the alleged offence Wherever the names of the relevant Acts are not given, the sections referred to are the sections of the Indian Penal Code (45 of 1860) —

1 Culpable homicide (sections 299 to 304)
2 Attempt to murder (section 307)
3 Causing miscarriage and abandonment of child (sections 312 to 317).
4 Kidnapping, abduction, slavery and forced labour (sections 360 to 374)
5 Rape and unnatural offences (sections 375 to 377).
6 Theft, extortion, robbery and dacoity (sections 378 to 402)
7. Criminal misappropriation and criminal breach of trust (sections 403 to 414).

8. Cheating (sections 415 to 420).

9 Mischief (sections 425 to 440).

10 Forgery, using forged documents and other offences relating to false documents (sections 463 to 477A

11 Offences relating to coins and stamps (sections 230 to 263 A).

12. Sinking or destroying a vessel at sea or attempting or conspiring to do so.

13 Damaging or destroying an aircraft in the air or attempting or conspiring to do so

14 Assault on board a vessel on the high seas or an aircraft in the air outside India or the Indian territorial waters with intent to destroy life or to do grievous bodily harm.

15 Revolt or conspiracy to revolt by two or more persons on board a vessel on the high seas or an aircraft in the air outside India or the Indian territorial waters against the authority of the master or the pilot in command

16 Smuggling of gold, gold manufactures, diamonds and other precious stones or of any narcotic substance [section 167, entry 81 in column 2 of Schedule, Sea Customs Act, 1878 (8 of 1878)].

17 Immoral traffic in women and girls [sections 4, 5, 6 and 8 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 104 of 1956)]

18. Any offence which is committed in India would be punishable under any other section of the Indian Penal Code or any other law and which may, from time to time, be specified by the Central Government by notification in the Official Gazette either generally for all foreign States or for all commonwealth countries or specially for one or more such States or countries

R C S. SARKAR,
Secretary to the Government of India.